

APPEAL NO. 032160
FILED SEPTEMBER 22, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 14, 2003. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) sustained a compensable injury on _____; that the respondent/cross-appellant (carrier) is not relieved of liability under Section 406.032(1)(C) because the claimed injury arose out of an act of a third person who intended to injure the claimant as an employee or because of the employment, and not because of personal reasons; and that the claimant did not have disability as a result of the injury of _____. The claimant appeals the hearing officer's determination that he has not had disability and the finding that he did not sustain a cervical strain or herniation, or a temporomandibular joint injury in the course and scope of his employment on _____. The carrier appeals the hearing officer's determinations that the claimant sustained a compensable injury on _____, and that it is not relieved of liability under Section 406.032(1)(C). The carrier filed a response to the claimant's appeal. No response to the carrier's appeal was received from the claimant.

DECISION

Affirmed.

Conflicting evidence was presented on the disputed issues of compensable injury, disability, and whether the injury arose out of an act of a third person intended to injure the claimant because of a personal reason and not directed at the claimant as an employee or because of the employment. Although the extent of the compensable injury was not a disputed issue from the benefit review conference, the parties presented evidence and argument regarding the extent of the injury. In Texas Workers' Compensation Commission Appeal No. 010322, decided March 22, 2001, we indicated that there may be instances where it becomes necessary to make findings on the extent of the compensable injury in order to resolve other disputed issues.

In the instant case, the claimant claimed he had disability, which was a disputed issue, from February 5 through June 9, 2003. Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The treating doctor's records reflect that he kept the claimant off work due to a neck injury. The claimant contended that the compensable injury included his face, jaw, and neck. The carrier contended that if a compensable injury occurred, it was limited to a facial contusion and that the claimant would not have disability from such an injury. In this circumstance, we believe that it was necessary for the hearing officer to determine the extent of the compensable injury in order to resolve the disability issue.

The hearing officer resolved the conflicting evidence by finding that the claimant sustained a facial contusion in the course and scope of his employment, but did not sustain a cervical strain or herniation, or a temporomandibular joint injury in the course and scope of his employment. We do not find that the hearing officer erred in determining the nature of the compensable injury in order to resolve the disability issue. See Texas Workers' Compensation Commission Appeal No. 031790, decided August 28, 2003. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's determinations are supported by sufficient evidence and that they are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **SERVICE LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH KELLY-GRAY, PRESIDENT
6907 CAPITOL OF TEXAS HIGHWAY NORTH
AUSTIN, TEXAS 78755.**

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret L. Turner
Appeals Judge